



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

|                     |            |
|---------------------|------------|
| Date of Reservation | 16.03.2021 |
| Date of Judgment    | 18.06.2021 |

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**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A(MD)No.392 of 2014

Sasikumar : Appellant/Claimant  
Vs.

1.Saravana Kumar

2.The Branch Manager,  
M/s.New India Assurance Company Limited,  
77-C, 12/10, Chitra Complex,  
Opp. To Karthik Theatre,  
Tharapuram Road,  
Oddanchathiram,  
Dindigul District.

: Respondents/Respondents

**PRAYER:-** Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Dindigul, made in MCOP No.13 of 2012, dated 30.04.2013.

For Appellant : Mr.D.Venkatesh  
For 1<sup>st</sup> Respondent : No appearance  
For 2<sup>nd</sup> Respondent : Mr.J.S.Murali

**J U D G M E N T**

This Civil Miscellaneous Appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Dindigul, in MCOP No.13 of 2012, dated 30.04.2013.

2.The short facts of the case is that on 26.12.2010, when the claimant was riding his TVS Victor TN-57-V-0947 from Ambilikai towards Viralikkottai, at that time, the 407 Van TN-39-C-2977 came in a rash and negligent manner and dashed against the two wheeler. In that process, the claimant sustained multiple injuries. A claim petition was filed by the injured claimant seeking compensation of Rs.11,00,000/- for the injuries sustained in the accident.

3.In the counter filed by the 2<sup>nd</sup> respondent Insurance Company, they disputed the manner of accident and their liability to pay compensation.  
<https://hcservices.ecourts.gov.in/hcservices/>



4. Before the tribunal, on the side of the claimant, 2 witnesses were examined and marked 9 documents. On the side of the 2<sup>nd</sup> respondent Insurance Company, no witness was examined and no document was marked.

5. The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the drivers of both vehicles were responsible for the accident and fixed the negligence on the part of the driver of the Van at 75% and 25% on the part of the rider of the motor cycle and awarded compensation of Rs.2,26,250/- together with interest at the rate of 7.5% p.a. Being not satisfied with the award of compensation, the claimant as appellant is before this court.

6. Heard both sides and perused the materials available on record.

7. The learned counsel appearing for the appellant/claimant argued that the accident occurred due to the rash and negligent driving of the offending vehicle namely the Van driver and the contributory negligence fixed on the part of the claimant is not correct and prays that the Civil Miscellaneous Appeal has to be allowed.

8. On the other hand, the learned counsel appearing for the 2<sup>nd</sup> respondent Insurance Company/2<sup>nd</sup> respondent submitted that the claimant himself during his cross examination admitted that there was head on collision between his vehicle and the offending vehicle and at the time of accident, the claimant had no valid driving licence to drive his vehicle and hence, from the evidence of PW1, it reveals that he had contributed negligence and hence, the tribunal correctly fixed contributory negligence at 25% on the part of the claimant and prays that the Civil Miscellaneous Appeal has to be dismissed.

9. The claimant stated that there was no contributory negligence on his part at the time of accident. But during his cross examination, PW1 stated as follows:- "நான் இரண்டு சக்கர வாகனம் ஓட்டும் போது தான் விபத்து ஏற்பட்டது. இரு சக்கர வாகனம் ஓட்ட ஓட்டுநர் உரிமம் இல்லை. நான் ஓட்டிய இரண்டு சக்கர வாகனமும் எதிரே வந்த வாகனமும் நேருக்கு நேர் மோதி விபத்து ஏற்பட்டது."

10. On careful perusal of the evidence of PW1, it reveals that at the time of accident, the claimant had no driving licence to drive his vehicle and further, at the time of accident, there was head on collision between the offending vehicle and his vehicle. Hence, from the evidence of PW1, it reveals that there was contributory negligence on the part of the claimant also. Hence, the trial court correctly came to the conclusion that the claimant had contributed negligence at 25%. Hence, it is not necessary to interfere with the findings of the tribunal in respect of negligence.



11. In so far as the quantum is concerned, it is not in dispute that in the alleged accident, the claimant had sustained 65% disability. The evidence of PW2 Dr. Vijayakumaran also corroborates the evidence of PW1. Based on the above evidence, the tribunal has awarded Rs.1,30,000/- for 65% disability (Rs.2,000/- x 65%).

12. It is to be noted here that in this case, the Doctor has assessed the disability of the claimant as 65%. As per the judgment reported in **2013(2) TAN MAC 583 (National Insurance Company Limited Vs. G. Ramesh)**, for 1% of disability, the claimant is entitled to Rs.3,000/-. Hence, it is held that the claimant is only entitled Rs.1,95,000/- for 65% disability at the rate of 3,000/- for 1%. In so far as the other heads, the award of the tribunal under the head of pain and suffering is enhanced to Rs.25,000/- and in respect of other heads, they are reasonable. Accordingly, the compensation awarded by the tribunal is recalculated as follows:-

| Head                                                        | Award of the Tribunal | Award of this court |
|-------------------------------------------------------------|-----------------------|---------------------|
| Disability for 65%                                          | 1,30,000/-            | 1,95,000/-          |
| Pain and suffering                                          | 20,000/-              | 25,000/-            |
| Extra Nutrition                                             | 10,000/-              | 10,000/-            |
| Loss of income during treatment period                      | 30,000/-              | 30,000/-            |
| Damages to clothes                                          | 1,000/-               | 1,000/-             |
| Transportation                                              | 2,000/-               | 2,000/-             |
| Medical expenses                                            | 1,10,000/-            | 1,10,000/-          |
| Total                                                       | <b>3,03,000/-</b>     | <b>3,73,000/-</b>   |
| After deduction 25% negligence on the part of the claimant. | <b>2,26,250/-</b>     | <b>2,79,750/-</b>   |

13. As the appellant/claimant had contributed 25% negligence, after deduction, the claimant is entitled to Rs.2,79,750/- together with interest at the rate of 7.5% p.a

14. In the result, the Civil Miscellaneous Appeal is **partly allowed** and the award of the tribunal at Rs.2,26,250/- is enhanced to **Rs.2,79,750/-**. The interest at the rate of 7.5% per annum awarded by the tribunal is maintained. The 2<sup>nd</sup> respondent Insurance Company is directed to deposit the modified award amount together with accrued interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the claimant is permitted to withdraw the modified amount, less the amount already withdrawn without filing any formal petition before the tribunal. The



appellant/claimant shall pay additional court fee for the enhanced amount. No costs.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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**Note :** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/ litigant concerned.

To,

The Chief Judicial Magistrate,  
The Motor Accident Claims Tribunal/  
Chief Judicial Magistrate, Dindigul.

Copy to

1.The sub Assisitant Registrar,  
A.E.SEction,  
Madurai Bench of Madras High Court, Madurai

2.The Section Officer(2C)  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.J.S.MURALI, Advocate ( SR-19715[F] dated 21/06/2021 )

CMA(MD) No.392 of 2014  
18.06.2021

DKS(CO)  
KB(15.07.2021) 4P 6C